Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM, 1980

No. 79-1239

SIDNEY A. SPARKS AND R. L. LYND,
D/B/A SIDNEY A. SPARKS, TRUSTEE
Petitioners

v.

DUVAL COUNTY RANCH COMPANY, INC.
CLINTON MANGES, ORVILLE DENNIS,
CLARENCE MARTENS, AND O. P. CARRILLO,
Respondents.

BRIEF OF RESPONDENT O. P. CARRILLO IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BRIEF OF RESPONDENT O. P. CARRILLO IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent O. P. Carrillo respectfully requests that this Court deny the Petition for Writ of Certiorari filed by Petitioners Sidney A. Sparks and R. L. Lynd d/b/a Sidney A. Sparks, Trustee, seeking to review a portion of the opinion of the United States Court of Appeals for the Fifth Circuit. The original opinion rendered by a three-judge panel is reported at 588 F.2d 124. The opinion of the Fifth Circuit sitting en banc for which review is sought is reported at 604 F.2d 976.

JURISDICTION

The en banc decision, sought to be reviewed in this Court, was entered on October 22, 1979. Rehearing of that opinion was sought by Orville E. Dennis, a Respondent herein, whose Motion for Rehearing was overruled by the Court of Appeals on December 14, 1979. Apparently the Motion for Rehearing was timely filed.

Respondent Orville E. Dennis in his Brief in Opposition questions the Court's jurisdiction by apparently asserting that the Petitioner cannot take advantage of the filing of the Motion for Rehearing because it was not filed by Petitioner.

Respondent O.P. Carrillo does not adopt this position and believes Petitioners have adequately stated jurisdiction.

REASONS WHY THE WRIT SHOULD BE DENIED

Respondent O. P. Carrillo was at all pertinent times the District Judge for the 229th Judicial District of Duval County, Texas. The Complaint filed in the United States District Court, brought under 42 U.S.C. §1983, complained of Judge Carrillo's acts during a hearing in pendancy for a lawsuit filed in his state court.

Petitioners' assertion, that Judge Carrillo was disqualified from hearing the state lawsuit with the resulting implication that his judicial acts taken during the course of the lawsuit were not within the Court's jurisdiction, is completely erroneous.

The Court of Appeals for the Fifth Circuit was correct in its determination that Judge Carrillo was acting within his judicial capacity in the state proceeding and that he is, accordingly, immune from suit. *Stump v. Sparkman*, 435 U.S. 399, 55 L.Ed.2d 331, 98 S.Ct. 1099 (1978); *Pierson v. Ray*, 386 U.S. 547, 18 L.Ed.2d 288, 87 S.Ct. 1213 (1967); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872).

ADDENDUM AND CONCLUSION

Respondent O. P. Carrillo opposes the granting of this Petition for Writ of Certiorari which presents the sole question of whether the doctrine of judicial immunity should be pierced in certain cases where outrageous conduct is shown on the part of a state judge.

Additional petitions for Writ of Certiorari, however, have been filed by other parties involved in the decision below; each present the question of whether a private citizen can be held liable for damages under 42 U.S.C. §1983 when he is alleged to be a co-conspirator with a state court judge who is absolutely immune under the doctrine of judicial immunity. The court below found that a private citizen can be liable for damages in such a conspiracy, and this Respondent intends to file an Amicus Brief in support of those petitioners who are questioning that part of the circuit court's decision. The holding that a private citizen can be held liable in an alleged conspiracy with a state judge greatly weakens the doctrine of judicial immunity since the judge will perforce become a witness for the defense in any such civil rights action. Even federal judges will find that they become involved when a state prisoner is dissatisfied with a decision in a federal habeas corpus case and alleges a conspiracy on the part of the federal judge together with state officers who do not enjoy either judicial immunity or quasi-judicial immunity, i.e. a state sheriff, a state police officer and others with only good faith immunity.

With respect to this Petition for Certiorari, Respondent prays that the Petition for Writ of Certiorari be denied.

With respect to those petitions generated from the same decision in the United States Court of Appeals for the Fifth Circuit which question the decision that private citizens can be held liable when a conspiracy with

a state judge is alleged, this Respondent would suggest that the importance of that question should prompt the Court to grant certiorari for those petitions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief of Respondent O. P. Carrillo in Opposition to Petition for Writ of Certiorari have been deposited with the United States Postal Service, with proper first-class postage affixed thereto, certified mail, return receipt requested, addressed to each of the following parties, or where represented by counsel to the counsel of record in the court below:

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on this the _____ day of March, 1980.

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